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OFFICE OF PETITIONS

In re Application of
Alan F. Savicki
Application No. 10/820,616
Filed: April 8, 2004
Attorney Docket No. 792.408

ON PETITION

This is a decision on the petition under 37 CFR 1.183 filed March 4, 2008. This is also a decision on the petition under 37 CFR 1.137(b) filed March 4, 2008.

The petition under 37 CFR 1.183 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The record reflects that a final Office action was mailed on June 14, 2007, allowing a shortened statutory period for reply of three months from its mailing date. On October 15, 2007, an amendment after final Office action was filed. An Advisory Action was issued on January 17, 2008, indicating that the response of October 15, 2007, did not place the application in condition for allowance. A Notice of Abandonment was mailed on February 8, 2008.

Petitioner maintains that the applicable rules should be suspended to allow the examiner to update the search of prior art considering the amendments made by the applicant in the papers filed October 15, 2007.

TREATMENT UNDER 37 CFR 1.183

It is noted that the period for reply to the final Office action is a shortened statutory period of three months that is extendable an additional three months. It is further noted that 37 CFR 1.183 allows for waiver or suspension of the rules that are not also a requirement of the statute. The request made by the instant petition is akin to extending the period for reply to the final Office action beyond the maximum statutory period of six months so that further search can be conducted and additional amendments be filed, if necessary. A review of the application file reveals that the by the Advisory Action mailed January 17, 2008, the examiner determined that the response of October 15, 2007, did not place the application in condition for allowance. A proper response was not filed within the allowable period and the Office does not have the authority to suspend the rules and extend the period for reply to the final Office action. The petition under 37 CFR 1.183 is dismissed as accordingly.

Further, while the Office encourages the examiner to issue the Advisory Action promptly, circumstances may arise that prevent the most expeditious processing of the amendment. The failure of the examiner to meet the ideal processing goal does not excuse the applicant from taking other measures to avoid the abandonment of the application should the examiner determine that the amendment filed does not place the application in condition for allowance. Certainly, applicant could have filed a Notice of Appeal or Request for Continued Examination with the amendment after final with the instruction that the Notice of

Appeal or Request for Continued Examination should only be processed in the event that the amendment after final is not entered. Applicants are charged with a filing a proper and timely response to all Office actions issued. If a reply filed the applicant is determined to be improper, such does not toll any time period running against the application. The holding of abandonment was properly imposed because a proper response to the final Office action was not filed within the maximum statutory period for reply.

TREATMENT UNDER 37 CFR 1.137(b)

The petition fee of \$1,620.00 will be charged to deposit account 03-2270.

The Request for Continued Examination filed March 4, 2008, is noted.

The application file is being directed to Technology Center GAU 3781 for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned (571) 272-3222.



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Petitions Attorney
Office of Petitions